

**ORIGINAL**

1 MORRIS PICKERING  
 Kristina Pickering, No. 992  
 2 Rebecca Risse, No. 7155  
 3 900 Bank of America Plaza  
 4 300 South Fourth Street  
 Las Vegas, NV 89101  
 Telephone: (702) 474-9400  
 Facsimile: (702) 474-9422

JUN 11 2004 P.M.C.

5 Attorneys for Defendant  
 6 Merck & Co., Inc.

## 7 UNITED STATES DISTRICT COURT

8 DISTRICT OF

9 CV-S-04-0608-JCM-LRL

10 ERIN HOLMES, individually; and  
 SHAWN HOLMES, individually,

11 Plaintiffs,  
 12 vs. )

13 MERCK & CO., INC., a New Jersey )  
 corporation; CLARK COUNTY, a political )  
 subdivision of the STATE OF NEVADA; )  
 CLARK COUNTY HEALTH DISTRICT; )  
 and JOHN DOES I through X, inclusive; )  
 and ROE CORPORATIONS I through X, )  
 inclusive, )

14 NOTICE OF REMOVAL

15 Defendants. )  
 16 )  
 17 )  
 18 )  
 19 )

20 TO: ERIN HOLMES; SHAWN HOLMES; and their attorneys  
 ECKLEY M. KEACH and ROBERT H. MURDOCK; and

21 TO: LANCE WILSON, Clerk, United States District Court for the District  
 22 of Nevada

23 PLEASE TAKE NOTICE that defendant Merck & Co., Inc., a New  
 24 Jersey Corporation ("Merck"), hereby removes to this Court the state court action  
 25 entitled "Erin Holmes and Shawn Holmes v. Merck & Co., Inc., Clark County,  
 26 and Clark County Health District," Case No. A483456, filed in the Eighth Judicial  
 27  
 28

District Court for the State of Nevada in and for the County of Clark. The grounds for removal are:

1. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 and 28 U.S.C. §§ 1441(a)-(c), in that it is a civil action between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs, as set forth below.

2. The complaint alleges that all plaintiffs are citizens of Nevada. Compl., ¶¶ 2-3.

3. Defendant Merck & Co., Inc. is a New Jersey corporation, with its principal place of business in New Jersey.

4. The amount in controversy, exclusive of interest and costs, exceeds \$75,000 as to each plaintiff. In the complaint, the plaintiffs request damages for mental anguish and emotional distress, medical expenses, out-of-pocket expenses, loss of companionship, pain and suffering of the decedent, attorneys' fees, general damages, and punitive damages, all purportedly arising from vaccinations administered to the decedent Jacob Holmes for which Merck allegedly is liable. See Compl. ¶¶ 19-20, 22-25, 31-32, 31-32, 38-40, 50, 54, 59, 64, 65-70, p. 10; *Shaw v. Thrift Drug, Inc.*, No. Civ. A. 98-5170, 1998 WL 848103, at \*1-2 (E.D. Pa. Dec. 4, 1998) (finding amount in controversy requirement satisfied where plaintiffs alleged variety of damages including bodily injury, medical bills, pain and suffering, and loss of earnings).

5. Venue is appropriate in the unofficial southern division of this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) - (b) and Local Rule IA 8-1. This action was originally brought in the Eighth Judicial District for the State of Nevada, Clark County; the plaintiffs allege they are residents of Clark County, Nevada; and the complaint alleges that the events claimed to give rise to liability occurred in Clark County, Nevada.

1           6. Copies of all process, pleadings and orders filed in the state  
 2 court are attached hereto. A true copy of the complaint filed in the state court is  
 3 attached at Tab A; a true copy of the initial appearance fee disclosure is attached  
 4 at Tab B; attached at Tabs C, D, and E are true copies of the summonses, with  
 5 returns filled out, showing service on Merck and the County defendants.  
 6

7           7. This notice of removal is timely filed within thirty days of  
 8 service as required by 28 U.S.C. § 1446(b), in that it is filed within thirty days after  
 9 April 12, 2004, which is the first date that any defendant in this action was served  
 10 with the summons and complaint.

11          8. The complaint names as defendants Clark County and the  
 12 Clark County Health District ("Health District"), and alleges that Clark County  
 13 and the Health District are political subdivisions of the State of Nevada. Compl.  
 14 ¶¶ 5, 6. The Court can disregard the joinder of Clark County and the Health  
 15 District in determining jurisdiction, because political subdivisions of the state of  
 16 Nevada have sovereign immunity under NRS 41.032, meaning that the complaint  
 17 fails to state a claim against either public entity. Moreover, the plaintiffs  
 18 voluntarily dismissed Clark County and the Health District by written  
 19 stipulation, a copy of which Merck first received on May 10, 2004. *See* Tab F.

20          9. The defendants sued as JOHN DOES I through X, inclusive,  
 21 and ROE CORPORATIONS I through X, inclusive, are fictitious parties and are  
 22 not relevant to the determination of subject matter jurisdiction. *See* 28 U.S.C.  
 23 § 1441(a) ("[f]or purposes of removal under this chapter, the citizenship of  
 24 defendants sued under fictitious names shall be disregarded").

25          10. The consent of the County and the Health District to removal  
 26 is not necessary since their sovereign immunity and dismissal renders their  
 27 presence irrelevant to the jurisdictional determination. *See United Computer  
 28 Systems, Inc. v. AT&T Corp.*, 298 F.3d 756, 762 (9<sup>th</sup> Cir. 2002). Nonetheless, Merck

is informed and believes and therefore alleges that Clark County and the Health District consent to removal.

11. Defendant has prepared and will this day file with the Clerk of the Eighth Judicial District Court a copy of this notice.

DATED this 11<sup>th</sup> day of May, 2004.

MORRIS PICKERING

By Rebecca Risse  
Kristina Pickering, No. 992  
Rebecca Risse, No. 7155  
900 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, NV 89101

Attorneys for Defendant  
Merck & Co., Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

## CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of MORRIS PICKERING, and that on this day I deposited for mailing in the U.S. Mail at Las Vegas, Nevada, a true copy of the following enclosed in a sealed envelope upon which first class postage was prepaid: **NOTICE OF REMOVAL**

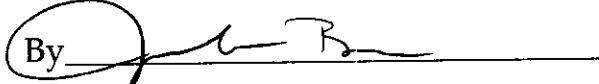
TO:

Eckley M. Keach, No. 1154  
Eckley M. Keach, Chtd.  
520 S. Fourth St.  
Las Vegas, NV 89101

Gloria Sturman  
Edwards, Hale, Sturman & Cushing, Ltd.  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101

Robert H. Murdock, No. 4013  
Murdock & Associates, Chtd.  
520 S. Fourth St.  
Las Vegas, NV 89101

DATED this 11<sup>th</sup> day of May, 2004.

By 



ORIGINAL

1 COMP  
2 Eckley M. Keach, Esq.  
3 Nevada Bar No. 1154  
4 ECKLEY M. KEACH, CHTD.  
5 520 South Fourth Street  
6 Las Vegas, NV 89101  
7 (702) 384-5563

8 Robert E. Murdock, Esq.  
9 Nevada Bar No. 4013  
10 MURDOCK & ASSOCIATES, CHTD.  
11 520 South Fourth Street  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 Attorneys for Plaintiffs

FILED

APR 6 11 10 AM '04  
Sally S. Ruzin  
CLERK

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 ERIN HOLMES, individually; and )  
4 SHAWN HOLMES, individually, )  
5 Plaintiffs, )  
6 vs. )  
7 MERCK & COMPANY, a New Jersey )  
8 corporation; CLARK COUNTY, a political )  
9 subdivision of the STATE OF NEVADA; )  
10 CLARK COUNTY HEALTH DISTRICT; )  
11 and JOHN DOES I through X, inclusive; )  
12 and ROE CORPORATIONS I through X, )  
13 inclusive, )  
14 Defendants. )

15 CASE NO. A483456  
16 DEPT. NO. XVIII

17 COMPLAINT FOR DAMAGES

18 COME NOW plaintiffs Shawn Holmes and Erin Holmesby and through their attorneys of  
19 record, Eckley M. Keach, Chtd. and Murdock & Associates, Chtd., and hereby allege as follows:

20 GENERAL ALLEGATIONS

21  
22 1. This action is instituted for damages, attorney's fees, costs of suit and pre-judgment  
23 interest.  
24 2. At all times herein mentioned, plaintiff Erin Holmes was and is a resident of Clark  
25 County, Nevada and decedent Jacob Holmes's natural mother.

COUNTY CLERK

APR 6 2004

RECEIVED

1       3. At all times herein mentioned, plaintiff Shawn Holmes was and is a resident of Clark  
2 County, Nevada and decedent Jacob Holmes's natural father.

3       4. Defendant Merck & Company, Inc. was and is a New Jersey corporation licensed to  
4 do business within the State of Nevada.

5       5. Defendant Clark County is a political subdivision of the State of Nevada.

6       6. Defendant Clark County Health District is a political subdivision of Clark County and  
7 the State of Nevada.

8       7. The true names or capacities, whether individual, corporate, associate or otherwise,  
9 of defendants John Does I through X, inclusive, are unknown to plaintiffs, who therefore sue said  
10 defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each  
11 of the defendants designated herein as Doe is negligently responsible in some manner for the events  
12 and happenings referred to herein and negligently caused injury and damages proximately thereby  
13 to plaintiffs as herein alleged. Plaintiffs will ask leave of court to amend this Complaint to insert the  
14 true names and capacities of said defendants Does I through X, inclusive, when same have been  
15 ascertained by plaintiffs, together with appropriate charging allegations and to join such defendants  
16 in this action.

17       8. The true names or capacities, whether individual, corporate, associate or otherwise,  
18 of defendants Roe Corporations I through X, inclusive, are unknown to plaintiffs, who therefore sue  
19 said defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that  
20 each of the defendants designated herein as Roe Corporation is negligently responsible in some  
21 manner for the events and happenings referred to herein and negligently caused injury and damages  
22 proximately thereby to plaintiffs as herein alleged. Plaintiffs will ask leave of court to amend this  
23 Complaint to insert the true names and capacities of said defendants Roe Corporations I through X,  
24 inclusive, when same have been ascertained by plaintiffs, together with appropriate charging  
25 allegations and to join such defendants in this action.

26       9. Plaintiffs are informed and believe and thereupon allege that at all times mentioned  
27 herein, defendants, and each of them, including Does I through X, inclusive, and Roe Corporations  
28 I through X, were the agents, servants, employees and/or joint venturers of their co-defendants, and

11 jointly and severally liable to plaintiffs herein.

2 10. On April 15, 2001, decedent Jacob Holmes was born in Clark County, Nevada.

3 11. On April 16, 2002 when he was twelve months of age, decedent Jacob Holmes  
4 received the MMR and varicella vaccinations at the Clark County Health District.

5 12. Following the inoculation on April 16, 2002, decedent Jacob Holmes developed  
6 various symptoms including a body rash, low grade fever, fussiness, decreased activity, not eating,  
7 slight diarrhea and episodes of vomiting.

8 13. On April 26, 2002, decedent Jacob Holmes was examined by his pediatrician, Paul  
9 Smith, M.D., who assessed him as being encephalopathic. Jacob was taken by ambulance from Dr.  
10 Smith's office to the hospital. His condition worsened and he was placed in the pediatric intensive  
11 care unit until he was discharged on May 4, 2002. During his hospitalization, Jacob underwent  
12 evaluations, consultations, diagnostic testing and laboratory analysis. Jacob was diagnosed as status  
13 epilepticus with respiratory distress, hypertension and abnormal diagnostic results and scans.

14 14. Over the following five months, Jacob's condition deteriorated and required  
15 additional emergency room visits, including a transfer to UCLA Children's Hospital in Los Angeles,  
16 California.

17 15. Jacob Holmes died on October 25, 2002.

18 **FIRST CAUSE OF ACTION**

19 **(Negligence)**

20 16. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 15  
21 herein and incorporate same by reference as though fully set forth herein.

22 17. Plaintiffs' injuries were caused by the negligence, and gross negligence, of  
23 defendants, and each of them, in that defendants, and each of them, manufactured, distributed,  
24 marketed, sold and administered the MMR and varicella vaccines in such a negligent, careless,  
25 reckless and wanton manner, and with willful and reckless disregard for the rights and safety of  
26 plaintiffs, so as to cause the death of Jacob Holmes, proximately causing his injuries, damages, pain  
27 and suffering and death as complained of herein.

28 //

1       18. As a direct and proximate result of defendants' negligence as herein alleged, decedent  
2 Jacob Holmes was injured in and about his head, neck, back, body, limbs, organs and nervous system  
3 and was otherwise injured and caused to suffer great pain of body and mind prior to his death, all to  
4 plaintiffs' general damage in an amount in excess of \$10,000.00.

5       19. As a further and direct and proximate result of defendants' negligence as herein  
6 alleged, plaintiffs have incurred expenses for medical care and treatment and funeral expenses, all  
7 to their damage in a sum according to proof at trial.

8       20. As a further direct and proximate result of the negligence of defendants, and each of  
9 them, plaintiffs have suffered physical and emotional injuries as herein set forth which has damaged  
10 plaintiffs Erin Holmes and Shawn Holmes in that they have suffered the loss of enjoyment of life;  
11 plaintiffs are informed and believe and thereon allege that such expenses will continue in the future,  
12 all to their general damage in an amount in excess of \$10,000.00.

13       21. As set forth hereinabove, defendants, jointly and severally, through their negligent,  
14 careless, reckless acts and without regard to the safety and well-being of others, directly and  
15 proximately caused the death of Jacob Holmes.

16       22. As a direct and proximate result of the negligent actions and conduct and breaches  
17 of duty of defendants as herein alleged, plaintiffs are entitled to damages for their grief, sorrow, loss  
18 of probable support, companionship, society, comfort and damages for pain, suffering and/or  
19 disfigurement of the deceased, all in an amount in excess of \$10,000.00.

20       23. As a direct and proximate result of the negligent actions, conduct and breaches of  
21 duties of defendants as herein alleged, plaintiffs are entitled to all losses and damages which  
22 decedent sustained, including, but not limited to, damages for pain and suffering by the decedent  
23 from the violent and terrifying injuries suffered and the terror he experienced up until the point of  
24 death, and losses for companionship, society and comfort in an amount in excess of \$10,000.00.

25       24. As a further and direct and proximate result of the negligence of defendants, and each  
26 of them, as herein alleged, plaintiffs Erin Holmes and Shawn Holmes have incurred expenses for the  
27 medical care and treatment of their son and expenses incidental thereto, all to their damage in a sum  
28 according to proof at trial and requests all damages available pursuant to NRS 41.085.

1        25. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
2 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

**SECOND CAUSE OF ACTION**

### **(Strict Product Liability)**

4  
5       26. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 25  
6       herein and incorporate same by reference as though fully set forth herein.

6 herein and incorporate same by reference as Exhibit G.

7 27. At all time mentioned herein, defendants Merck & Company, Inc. and Does I through

8 X, inclusive, and Roe Corporations I through X, inclusive, and each of them, were the

9 manufacturers, designers, suppliers, assemblers, distributors, sellers, inspectors, marketers,

10 warranters, and/or advertisers of the MMR and varicella vaccinations, which contained design and/or

11 manufacturing defects, thereby rendering the vaccinations unsafe and dangerous for use by the

12 consumer, user and/or bystander. Defendants also failed to provide adequate warnings or

13 instructions to consumers and users of the vaccinations concerning the risks associated with

14 inoculations.

14 inoculations.  
15        28. On April 16, 2002 decedent Jacob Holmes was inoculated with the MMR and  
16 varicella vaccinations in the manner in which they were intended.

16 varicella vaccinations in the manner in which he was inoculated.  
17 29. Following the inoculations, decedent Jacob Holmes developed symptoms and  
18 ultimately died on October 25, 2002 as a result of the side effects of the MMR and varicella  
19 vaccinations.

19 vaccinations.  
20       30. As a direct and proximate result of the defective design and manufacturing of the  
21 MMR and varicella vaccinations, which defects existed at the time the vaccinations left the hands  
22 of the manufacturer and distributor, and as a result of the conduct of defendants, and each of them,  
23 including Does I through X, inclusive, and Roe Corporations I through X, inclusive, the vaccinations  
24 failed to perform in the manner to be reasonably expected, causing the death of Jacob Holmes, all  
25 to plaintiffs' general damage in an amount in excess of \$10,000.00.

31. As a direct and proximate result of the conduct of the defendants, including Does I through X, inclusive, and Roe Corporations I through X, and each of them, and the defective conditions of the vaccinations, plaintiffs have each incurred medical expenses in an amount not yet

1 ascertained, and when said amounts are ascertained, plaintiffs will seek leave of Court to amend this  
2 Complaint to allege said amounts.

3       32. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
4 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

### **THIRD CAUSE OF ACTION**

### **(Negligent Design)**

7       33. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 32  
8 herein and incorporate same by reference as though fully set forth herein.

9       34. At all times mentioned herein, defendants, and each of them, were negligent in the  
10 design, testing, manufacture, inspection, marketing, distribution, and sale of the products.

11        35. At all times mentioned herein, defendants, and each of them, knew or should have  
12 known that their products were not reasonably safe as designed, manufactured, tested and marketed;  
13 that the products contained ingredients which were harmful to individuals while they were being  
14 vaccinated in the proper manner.

15       36. At all times mentioned herein, defendants, and each of them, disregarded this  
16 knowledge to the detriment of plaintiffs and other consumers of the product.

17       37. At all times mentioned herein, defendants, and each of them, were negligent, careless  
18 and reckless in failing to warn their intended consumers of the above risks and consequences  
19 associated with the product as it was their duty to so inform.

20       38. As a direct and proximate result of the actions of defendants, and each of them,  
21 plaintiffs were injured in their bodies and their spirit, were caused to suffer extreme and severe pain,  
22 distress, mental and emotional distress and upset, which injuries may be permanent and progressive,  
23 and are all to their damage in an amount in excess of \$10,000.00.

24       39. As a further direct and proximate result of the negligence and careless actions of  
25 defendants, and each of them, plaintiffs were caused to incur medical expenses for the care and  
26 treatment of those injuries Jacob received in this incident, which expenses are all to their damage  
27 in a sum according to proof at trial. Plaintiffs are informed and believe and thereon allege that such  
28 expenses will continue in the future, all to their damage and in a presently unascertainable amount,

1 and in this regard, plaintiffs pray leave of court to insert all damages herein when same have been  
2 fully ascertained.

3 40. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
4 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

5 **FOURTH CAUSE OF ACTION**

6 **(Failure to Warn)**

7 41. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 40  
8 herein and incorporate same by reference as though fully set forth herein.

9 42. Defendants had a duty to warn plaintiffs of any dangers or hazards faced by plaintiffs  
10 when decedent Jacob Holmes was inoculated with the MMR and varicella vaccinations, which duty  
11 was breached by defendants as more fully set forth hereinabove.

12 43. As a direct and proximate result of the actions, conduct and breach of duties by  
13 defendants, and each of them, as herein alleged, plaintiff has suffered the damages stated herein.

14 **FIFTH CAUSE OF ACTION**

15 **(Misrepresentation)**

16 44. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 43  
17 herein and incorporate same by reference as though fully set forth herein.

18 45. At all times mentioned herein, defendants Merck & Company, Inc. was engaged in  
19 the business of, among other things, providing vaccines for inoculating children for the prevention  
20 of various diseases, including measles, mumps and rubella, and provided such product to decedent  
21 Jacob Holmes.

22 46. At all times mentioned herein, defendant Clark County Health District was engaged  
23 in the business of, among other things, inoculating children for the prevention of various diseases,  
24 including measles, mumps and rubella, and provided such product to decedent Jacob Holmes.

25 47. Defendants Merck & Company, Inc. and Clark County Health District, and each of  
26 them, misrepresented the quality of Merck's products and the risks associated with the products  
27 which would be material to plaintiffs herein as potential purchasers and users.

28 //

48. Plaintiffs, and each of them, were persons who would reasonably be expected to use the Merck vaccines and did justifiably rely upon the misrepresentation of defendants, and each of them, with respect to the vaccines.

49. As a direct and proximate result of the misrepresentation of the products by defendants, and each of them, plaintiffs have suffered injuries and damages described herein.

50. It has become necessary for plaintiffs to retain the services of an attorney to prosecute this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

**SIXTH CAUSE OF ACTION**

**(Express Warranty)**

51. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 50 herein and incorporate same by reference as though fully set forth herein.

52. At the time defendants, and each of them, placed the Merck vaccines into the stream  
of commerce, defendants, and each of them, expressly warranted that the products were safe for their  
intended use. The products were not safe for their intended use and defendants breached an express  
warranty.

8       54. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
9 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

**SEVENTH CAUSE OF ACTION**

### **(Implied Warranty of Merchantability)**

2 55. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 54  
22 herein and incorporate same by reference as though fully set forth herein.

56. At the time they placed the products into the stream of commerce, defendants, and  
each of them, extended an implied warranty to plaintiffs and others that the products were  
merchantable.

27        57. At all times mentioned herein, the products were not merchantable and the aforesaid  
28 implied warranty made by defendants, and each of them, was breached.

1       58. As a direct and proximate result of defendants' breach of warranty, plaintiffs have  
2 suffered severe and permanent injuries as more fully described herein.

3        59. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
4 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

## **EIGHTH CAUSE OF ACTION**

(Implied Warranty of Fitness for a Particular Purpose)

7       60. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 59  
8 herein and incorporate same by reference as though fully set forth herein.

9        61. At the time defendants, and each of them, sold the products and had reason to know  
10 that the products were required and purchased for a particular purpose and the ultimate user of the  
11 product was relying upon defendants' skill and judgment to select and or furnish products suitable  
12 for the particular purpose.

13       62. At the time of use of the products, plaintiffs did in fact rely on the skill and judgment  
14 of defendants, and each of them, to select and provide suitable products for the purpose of preventing  
15 various diseases and an implied warranty of fitness for a particular purpose existed at the time of the  
16 sales.

17       63. As a direct and proximate result of defendants' breach of implied warranty of fitness  
18 for a particular purpose, plaintiffs have suffered severe and permanent injuries more fully described  
19 herein.

20       64. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
21 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

**NINTH CAUSE OF ACTION**

### **(Punitive Damages)**

24       65. Plaintiffs hereby reallege those allegations contained in paragraphs 1 through 64  
herein and incorporate same by reference as though fully set forth herein.  
25

26        66. Defendants, and each of them, were aware of problems relating to the design and  
27 manufacture of the MMR and varicella vaccines prior to the sale of such vaccines to plaintiffs.

38 //

67. Specifically, upon information and belief, defendants were aware that the vaccines could cause serious harm and possibly death to person(s) such as plaintiffs.

3       68. Despite such knowledge, defendants, and each of them, allowed such vaccines to be  
4 introduced into the stream of commerce.

5        69. Such conduct was willful, wanton, reckless and malicious in reckless disregard for  
5 the rights and safety of others, including in this instance, plaintiffs.

7        70. Such conduct requires the imposition of punitive and/or exemplary damages in excess  
8        of \$10,000.00.

9       71. It has become necessary for plaintiffs to retain the services of an attorney to prosecute  
10 this action, and plaintiffs are therefore entitled to attorney's fees and costs of suit.

WHEREFORE, plaintiffs, and each of them, pray for judgment against defendants, and each of them, as follows:

13           1. For general damages in a sum in excess of \$10,000.00;  
14           2. For the damages for the wrongful death of Jacob Holmes, said damages to include,  
15 but not be limited to, general damages in an amount in excess of \$10,000.00, special damages to be  
16 shown at trial, punitive damages in an amount in excess of \$10,000.00 and attorney's fees and costs  
17 of suit;  
18           3. For attorney's fees and costs incurred; and  
19           4. For such other and further relief as the Court deems just and proper.

ECKLEY M. KEACH, CHTD.  
MURDOCK & ASSOCIATES, CHTD.

~~Eckley M. Keach Bar No. 1154  
Robert E. Murdock Bar No. 4013  
320 South Fourth Street  
Las Vegas, NV 89101  
Attorneys for Plaintiffs~~

**ORIGINAL**

1 IAFD  
 2 Eckley M. Keach, Esq.  
 3 Nevada Bar No. 1154  
 4 ECKLEY M. KEACH, CHTD.  
 5 520 South Fourth Street  
 6 Las Vegas, NV 89101  
 7 (702) 384-5563  
 8 Robert E. Murdock, Esq.  
 9 Nevada Bar No. 4013  
 10 MURDOCK & ASSOCIATES, CHTD.  
 11 520 South Fourth Street  
 12 Las Vegas, NV 89101  
 13 (702) 384-5563  
 14 Attorneys for Plaintiffs

*FILED*  
*APR 6 11 22 AM '04*  
*Eckley M. Keach, Esq.*  
*CLERK*

**DISTRICT COURT**

CLARK COUNTY, NEVADA

**A 483456***XVIII*

13 ERIN HOLMES, individually; and	)	CASE NO.
14 SHAWN HOLMES, individually,	)	DEPT. NO.
15 vs.	)	INITIAL APPEARANCE
16 MERCK & COMPANY, a New Jersey	)	FEE DISCLOSURE
17 corporation; CLARK COUNTY, a political	)	
18 subdivision of the STATE OF NEVADA;	)	
19 CLARK COUNTY HEALTH DISTRICT;	)	
20 and JOHN DOES I through X, inclusive;	)	
21 and ROE CORPORATIONS I through X,	)	
22 inclusive,	)	
23 Defendants.	)	

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

24 Plaintiff Erin Holmes	\$133.00
25 Plaintiff Shawn Holmes	30.00
 26 TOTAL REMITTED	
\$163.00	

//

COUNTY CLERK

APR 06 2004

RECD 282

1 DATED this 6th day of April, 2004.

2 ECKLEY M. KEACH, CHTD.  
3 MURDOCK & ASSOCIATES, CHTD.

4  
5 Eckley M. Keach Bar No. 1154  
Robert E. Murdock Bar No. 4013  
6 520 South Fourth Street  
Las Vegas, NV 89101  
7 Attorneys for Plaintiffs

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORIGINAL

1 SUMM  
2 Eckley M. Keach, Esq.  
3 Nevada Bar No. 1154  
4 ECKLEY M. KEACH, CHTD.  
5 520 South Fourth Street  
6 Las Vegas, NV 89101  
7 (702) 384-5563

*Shirley B Panagian*

APR 22 11 22 AM '04

5 Robert E. Murdock, Esq.  
6 Nevada Bar No. 4013  
7 MURDOCK & ASSOCIATES, CHTD.  
8 520 South Fourth Street  
9 Las Vegas, NV 89101  
10 (702) 384-5563  
11 Attorneys for Plaintiffs

FILE

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 ERIN HOLMES, individually; and ) CASE NO. A 483456  
16 SHAWN HOLMES, individually, ) DEPT. NO. XVIII  
17 Plaintiffs, )  
18 vs. )  
19 MERCK & COMPANY, a New Jersey )  
20 corporation; CLARK COUNTY, a political )  
21 subdivision of the STATE OF NEVADA; )  
22 CLARK COUNTY HEALTH DISTRICT; )  
23 and JOHN DOES I through X, inclusive; )  
24 and ROE CORPORATIONS I through X, )  
25 inclusive, )  
Defendants. )

SUMMONS

26 NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
27 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN TWENTY (20)  
28 DAYS. READ THE INFORMATION BELOW.

29 TO THE DEFENDANT: MERCK & COMPANY

30 1. A civil complaint has been filed by Plaintiff against you for the relief set forth in the  
31 complaint.  
32 2. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
33 you exclusive of the day of service, you must do the following:

APR 22 2004  
FILED  
RECEIVED  
CLERK'S OFFICE

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

3 shown below.  
4       3. Unless you respond, your default will be entered upon application of Plaintiff and this  
5 Court may enter a judgment against you for the relief demanded in the Complaint, which could result  
in the taking of money or property or other relief requested in the Complaint.

5 in the taking of money or property of other persons.  
6 4. If you intend to seek the advice of an attorney in this matter, you should do so  
promptly so that your response may be filed on time.

**SHIRLEY PARAGUIRRE, Clerk of Court**

APR 0 0 2004

By Theodora Jones Date  
Deputy Clerk  
Clark County Courthouse  
200 South Third Street  
Las Vegas, NV 89155 **TEODORA JONES**

13 || Issued at the direction of:

14 ECKLEY M. KEACH, CHTD.  
MURDOCK & ASSOCIATES, CHTD.

~~16~~ Eckley M. Keach Bar No. 1154  
17 Robert E. Murdock Bar No. 4013  
520 South Fourth Street  
18 Las Vegas, NV 89101  
Attorney for Plaintiffs

ERIN HOLMES, INDIVIDUALLY; AND SHAWN  
HOLMES, INDIVIDUALLY

V.

MERCK & COMPANY, ET AL

) DISTRICT COURT CLARK COUNTY, NEVADA  
Docket/Index # A483456

Affidavit of Service

State of New Jersey

SS:

County of Bergen

I, JAMES REAP being duly sworn according to law upon my oath, depose and say, that deponent is not a party to this action, has no direct personal interest in this litigation, is over 18 years of age and resides in, the State of New Jersey.

That on April 14, 2004 at 1:00 PM, deponent served the within-named SUMMONS AND COMPLAINT upon MERCK & CO., INC.. Said service was effected at MERCK & CO., INC., Corporation Trust Company - Registered Agent, 820 Bear Tavern Road, Trenton, NJ 08628, in the following manner:

A foreign corporation, by delivering therat a true copy of each to LESLIE LOFTON personally. Deponent knew said corporation so served to be the corporation described as MERCK & CO., INC. and knew said individual to be an authorized person to accept service of process.

LESLIE LOFTON is described to the best of deponent's ability at the time and circumstances of service as follows:  
Sex: Female Skin: White Hair: Black Age(Approx): 30 Ht.(Approx): 5' 7" Wt.(Approx): 130-140 lbs

I certify that the foregoing statements made by me are true, correct and my free act and deed. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Sworn to before me on April 16, 2004

Donna Jean Arciuolo  
DONNA JEAN ARCIUOLO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 11/07/07

JAMES REAP, Process Server  
Callahan Lawyers Service  
50 Main Street  
P.O. Box 632  
Hackensack, NJ 07602  
(201) 489-2245 877-767-2245 , (201) 489-8093 (Fax)

CLS # 19560



ORIGINAL

1 SUMM  
2 Eckley M. Keach, Esq.  
3 Nevada Bar No. 1154  
4 ECKLEY M. KEACH, CHTD.  
5 520 South Fourth Street  
6 Las Vegas, NV 89101  
7 (702) 384-5563  
8 Robert E. Murdock, Esq.  
9 Nevada Bar No. 4013  
10 MURDOCK & ASSOCIATES, CHTD.  
11 520 South Fourth Street  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 Attorneys for Plaintiffs

FILED

APR 16 4 56 PM '04  
Sally S. Ferguson  
CLERK

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12  
13 ERIN HOLMES, individually; and ) CASE NO.  
14 SHAWN HOLMES, individually, ) DEPT. NO. 483456  
15 Plaintiffs, )  
16 vs. )  
17 MERCK & COMPANY, a New Jersey )  
18 corporation; CLARK COUNTY, a political )  
19 subdivision of the STATE OF NEVADA; )  
20 CLARK COUNTY HEALTH DISTRICT; )  
21 and JOHN DOES I through X, inclusive; )  
22 and ROE CORPORATIONS I through X, )  
23 inclusive, )  
24 Defendants. )  
25

SUMMONS

XVII

22 NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
23 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN TWENTY (20)  
24 DAYS. READ THE INFORMATION BELOW.

25 TO THE DEFENDANT: CLARK COUNTY

26 1. A civil complaint has been filed by Plaintiff against you for the relief set forth in the  
27 complaint.  
28 2. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
you exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

3. Unless you respond, your default will be entered upon application of Plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

4. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

**SHIRLEY PARAGUIRRE, Clerk of Court**

**TEODORA JONES**

By \_\_\_\_\_ DISAPPEARED b 2034

Deputy Clerk COURT Date  
 Clark County Courthouse SEAL  
 200 South Third Street  
 Las Vegas, NV 89155

Issued at the direction of:

ECKLEY M. KEACH, CHTD.  
MURDOCK & ASSOCIATES, CHTD.

Eckley M. Keach Bar No. 1154  
Robert E. Murdock Bar No. 4013  
520 South Fourth Street  
Las Vegas, NV 89101  
Attorney for Plaintiffs

AFFIDAVIT OF SERVICE

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.  
Scott Hetrick

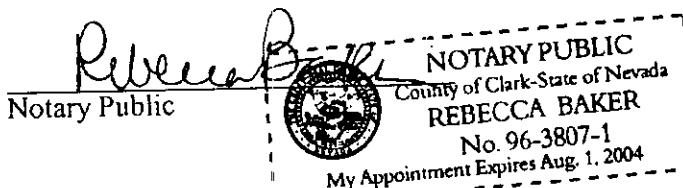
, being first duly sworn, says: That at all times herein, affiant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. This affiant received one copy(ies) of the Summons and Complaint on the 8th day of April, 2004, and served same on the 12th day of April, 2004, by delivering and leaving a copy with defendant (Name: CLARK COUNTY) at 500 S. Grand Central Pkwy 6th Floor, Las Vegas, NV (address).

By Serving: Stan Jenkins, Managing Agent

Signature of Person Making Service

Subscribed and sworn to before me

this 13th day of April, 2004



ORIGINAL

1 SUMM  
2 Eckley M. Keach, Esq.  
3 Nevada Bar No. 1154  
4 ECKLEY M. KEACH, CHTD.  
5 520 South Fourth Street  
6 Las Vegas, NV 89101  
7 (702) 384-5563  
8 Robert E. Murdock, Esq.  
9 Nevada Bar No. 4013  
10 MURDOCK & ASSOCIATES, CHTD.  
11 520 South Fourth Street  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 Attorneys for Plaintiffs

FILED

APR 16 4 56 PM '04

*Sheri S. Ferguson*  
CLERK

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12  
13 ERIN HOLMES, individually; and ) CASE NO.  
14 SHAWN HOLMES, individually, ) DEPT. NO.  
15 Plaintiffs, )  
16 vs. )  
17 MERCK & COMPANY, a New Jersey )  
18 corporation; CLARK COUNTY, a political )  
19 subdivision of the STATE OF NEVADA; )  
20 CLARK COUNTY HEALTH DISTRICT; )  
21 and JOHN DOES I through X, inclusive; )  
22 and ROE CORPORATIONS I through X, )  
23 inclusive, )  
24 Defendants. )  
25

1483456

*XVIII*

SUMMONS

26 NOTICE: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
27 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN TWENTY (20)  
28 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: CLARK COUNTY HEALTH DISTRICT

26 1. A civil complaint has been filed by Plaintiff against you for the relief set forth in the  
27 complaint.  
28 2. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
you exclusive of the day of service, you must do the following:

CLARK COUNTY  
CLERK'S OFFICE  
APR 16 2004

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

3. Unless you respond, your default will be entered upon application of Plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

4. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

**SHIRLEY PARAGUIRRE, Clerk of Court**

By TEODORA JONES APR 9 2004  
Deputy Clerk Date  
Clark County Courthouse DISTRICT  
200 South Third Street COURT  
Las Vegas, NV 89155 SEAL

Issued at the direction of:

ECKLEY M. KEACH, CHTD.  
MURDOCK & ASSOCIATES, CHTD.

Eckley M. Keach Bar No. 1154  
Robert E. Murdock Bar No. 4013  
520 South Fourth Street  
Las Vegas, NV 89101  
Attorney for Plaintiffs

**AFFIDAVIT OF SERVICE**

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) SS.

Scott Hetrick

4 SCOTT HETTRICK, being first duly sworn, says: That at all times  
5 herein, affiant was and is a citizen of the United States, over 18 years of age, not a party to nor  
6 interested in the proceeding in which this affidavit is made. This affiant received one copy(ies)  
7 of the Summons and Complaint on the 8th day of April, 2004, and served same on the 2th  
8 day of April, 2004, by delivering and leaving a copy with defendant (Name:  
\_\_\_\_\_  
FBI - LOS ANGELES OFFICE - 105 - 1 - 1

Las Vegas, NV

(address).

By Serving: Diana Lindquist, Legal Asst.

Signature of Person Making Service

14 Subscribed and sworn to before me

15 this 13<sup>th</sup> day of April, 2004

17 Rebecca Bahr

Notary Public



NOTARY PUBLIC

COURT OF CLARK COUNTY, NEVADA

## REBECCA BAKE

No. 96-3807-1

1 SAO  
2 Eckley M. Keach, Esq.  
3 Nevada Bar No. 1154  
4 ECKLEY M. KEACH, CHTD.  
5 520 South Fourth Street  
6 Las Vegas, NV 89101  
7 (702) 384-5563

8 Robert E. Murdock, Esq.  
9 Nevada Bar No. 4013  
10 MURDOCK & ASSOCIATES, CHTD.  
11 520 South Fourth Street  
12 Las Vegas, NV 89101  
13 (702) 384-5563  
14 Attorneys for Plaintiffs

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 ERIN HOLMES, individually; and  
18 SHAWN HOLMES, individually,

) CASE NO. A 483456  
19 Plaintiffs, ) DEPT. NO. XVIII

vs.

20 MERCK & COMPANY, a New Jersey  
21 corporation; CLARK COUNTY, a political  
22 subdivision of the STATE OF NEVADA;  
23 CLARK COUNTY HEALTH DISTRICT;  
24 and JOHN DOES I through X, inclusive;  
25 and ROE CORPORATIONS I through X,  
26 inclusive,

27 STIPULATION AND ORDER FOR  
28 DISMISSAL OF DEFENDANTS  
CLARK COUNTY AND CLARK  
COUNTY HEALTH DISTRICT

Defendants.

1 IT IS HEREBY STIPULATED by and between the parties hereto, through their respective  
2 counsel of record, that defendants Clark County and Clark County Health District shall be, and  
3 hereby are, dismissed without prejudice.

4 DATED this \_\_\_\_\_ day of May, 2004.

5 ECKLEY M. KEACH, CHTD.  
6 MURDOCK & ASSOCIATES, CHTD.

EDWARDS, HALE, STURMAN &  
CUSHING, LTD.

7  
8 Eckley M. Keach Bar No. 1154  
Robert E. Murdock Bar No. 4013  
9 520 South Fourth Street  
Las Vegas, NV 89101  
10 Attorneys for Plaintiffs

Gloria J. Sturman Bar No. 2314  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101  
Attorneys for Clark County Health District

11

12

**ORDER**

13 Based on the foregoing Stipulation for Dismissal of Clark County and Clark County Health  
14 District and good cause appearing therefor,

15 IT IS HEREBY ORDERED that defendants Clark County and Clark County Health District  
16 be dismissed, without prejudice.

17 DATED this \_\_\_\_\_ day of May, 2004.

18

19

**DISTRICT JUDGE**

21 Respectfully submitted by:

22 ECKLEY M. KEACH, CHTD.  
23 MURDOCK & ASSOCIATES, CHTD.

25 Eckley M. Keach Bar No. 1154  
26 Robert E. Murdock Bar No. 4013  
27 520 South Fourth Street  
Las Vegas, NV 89101  
28 Attorneys for Plaintiffs